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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
JOYCE, HAROLD	

ART UNIT	PAPER NUMBER
3749	

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/818,383	KREICHAUF, RUTH D.	
	Examiner	Art Unit	
	Harold Joyce	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 May 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *26-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 26, 28 and 32-36 are rejected under 35 USC 103(a) as being obvious over Daroga, et al. (U.S. patent No. 4,631,872) in view of Trice (U.S. patent No. 3,251,159).

Daroga, et al. disclose a nuclear blast and fall out shelter, which can be made of different types of materials and in different shapes and sizes. See column 3, lines 9-13. The shelter includes oxygen cylinders 24, carbon dioxide absorbers 44, and sealing devices (valve 52 for sealing ventilation duct 51, air-tight door 16 and escape hatch 62). With respect to claim 28, Daroga, et al. also recognize that other types of oxygen generators could be employed such as those produced by electrolysis of water (see column 3, lines 1-8).

Although the Daroga, et al. shelter is an arrangement of interrelated parts attached together (see column 1, lines 65-68), it cannot be certain from the teachings of Daroga, et al. that such could broadly be considered a "kit" or group of interrelated parts as addressed in *In re Venezia, 189 USPQ 149 (CCPA 1976).* However, Applicant's attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly teaches a need to manufacture a fall-out and bomb shelter "which is inexpensive to construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble" (see column 1, lines 35-40).

Therefore, to manufacture the fall-out shelter of Daroga, et al. as a group of interrelated parts to be assembled on site would have been obvious in view of the teachings of Trice for the same advantages. In so doing, the Daroga, et al. shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation.

As to the inclusion of "portable" in the claim language of claim 34, this in and of itself would not render the claim patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claim 27 and 35 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. and Trice for reasons stated in the rejection of claim 26 above, and further in view of Connor (U.S. patent No. 2,982,511).

Claim 27 calls for the sealing device to be an "inflatable gas bladder". Although the Daroga, et al. reference does not provide an explicit description of in-line valve 52, attention is directed to the Connor reference which discloses an inflatable in-line valve designed to be simple in construction and easy to install. See column 1, lines 20-25. To substitute an inflatable valve such as taught by Connor for valve 52 on Daroga, et al. would have been obvious in order to simplify the assembly of the overall "kit".

Claim 29 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. in view of Trice for reasons stated in the rejection of claim 26 above, and further in view of Mayland, et al. (U.S. patent No. 3,485,743). The Mayland, et al. reference teaches an electrolytic oxygen generating/carbon dioxide absorbing system for use in a fallout shelter. See column 2, line 14. The unwanted hydrogen gas is vented away from the fallout shelter. See column 3, lines 4-6 and column 5, lines 55-59. As illustrated by Mayland, et al. in figure 2, the hydrogen gas is vented from compartment 10 via tubing, which is capable of being connected to any desired location such as an existing plumbing water trap of sink 65 or toilet 64.

To employ the system of Mayland, et al. as part of the "kit" of Daroga, et al. would have been obvious and would amount to mere selection of one well known oxygen generating/carbon dioxide absorbing system used in fall-out shelters for another, especially since Daroga, et al. recognizes that other systems could be selected.

Claim 30 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. in view of Trice for reasons stated in the rejection of claim 26 above, and further in view of Hoshiko (U.S. patent No. 4,508,700). The Hoshiko reference discloses a conventional oxygen generator that includes a solid material that generates gaseous oxygen when contacted with water. See column 1, lines 27-30.

To employ the system of Hoshiko as part of the kit of Daroga, et al. would have been obvious and would amount to mere selection of one well known oxygen generating system for another, especially since Daroga, et al. recognizes that other systems could be selected.

Claim 31 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. in view of Trice for reasons stated in the rejection of claim 26 above, and further in view of Staub, Jr. et al. (U.S. Patent No. 3,593,711). The Staub, et al. reference discloses a conventional oxygen generating/carbon dioxide absorbing system wherein a chemical revitalizing compound serves as both an oxygen source and a carbon dioxide scrubber for uses in sealed chambers or rooms (see abstract).

To employ the system of Staub, et al. as part of the "kit" of Daroga, et al. would have been obvious and would amount to mere selection of one well known oxygen generating/carbon dioxide absorbing system for another, especially since Daroga et al. recognizes that other systems could be selected.

Claims 26, 28-31, 34 and 36 are rejected under 35 USC 103(a) as being obvious over Rudinger (U.S. patent No. 2,977,723) in view of Trice and further in view of Daroga, et al., Mayland, et al., Hoshiko or Staub, et al.

Although the Rudinger bombshelter is made of poured concrete (see column 2, lines 3-6), Applicant's attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly teaches a need to manufacture a fall-out and bomb shelter "which is inexpensive to construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble." See column 1, lines 35-40.

Therefore, to manufacture the fall-out shelter of Rudinger as a group of interrelated parts to be assembled on site would have been obvious in view of the teachings of Trice for the same advantages. In so doing, the Rudinger shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation.

The Rudinger reference discloses a bombshelter having ventilation duct 32 "which may be cut out of operation by being closed by a steel door (not shown)". See column 3, lines 9 and 10. Such steel door meets the claim limitation of "at least one sealing device for sealing said room from any coupled ventilation duct".

Although no equipment is shown within the bombshelter, the Rudinger reference does recognize that internal equipment must be provided such as an oxygen generator and a carbon dioxide filter. See column 2 and 3, the bridging paragraph.

To provide oxygen generating systems and carbon dioxide systems such as those disclosed by Daroga, et al., Mayland, et al., Hoshiko, or Staub, et al. together with the bombshelter of the Rudinger modified in view of the teachings of Trice as a "kit" would have been obvious in order to maintain the interior atmosphere at a safe level, especially since Rudinger already recognizes the necessity for such systems.

As to the inclusion of "portable" in the claim language of claim 34, this in and of itself would not render the claim patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claims 27 and 35 are rejected under 35 U.S.C. 103(a) as being obvious over Rudinger, Trice, Daroga, et al., Mayland, et al., Hoshiko and Staub, et al. for reasons stated in the

rejection of claim 26 above, and further in view of Pearman, et al. (U.S. patent No. 6,217,441).

The Rudinger bombshelter includes a steel door (not shown) to cut out operation of the ventilation duct 32. The Pearman, et al. reference discloses a sealing device in the form of an inflatable bladder for sealing off ventilation ducts in the event of a chemical or biological attack. To provide an inflatable sealing device as, for example, taught by Pearman, et al. with the Rudinger bombshelter in "kit" form would have been an obvious substitution of one well known sealing device for another within the bombshelter arts that would work equally well as the steel door.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Claims 27 and 35 are rejected under 35 USC 103(a) as being obvious over Rudinger, Trice, Daroga, et al., Mayland, et al., Hoshiko and Staub, et al. for reasons stated in the rejection of claim 26 above, and further in view of Long et al. (BIOTERRORISM SECRETS FOR SURVIVAL, Chapter 5, 1998). On page 48 of chapter 5, Long et al. teaches how to create a "sealed Room" or "Safe Room" in case of a terrorist biological attack. Long, et al. suggest using plastic sheets and duct tape to cover and seal any air leaks such as doors and windows. Although Rudinger already suggests closing off all ventilation openings, to employ plastic and duct tape to seal off any ventilation ducts such as filter 32 and doors 28 and 48 on the Rudinger bombshelter would have been obvious in view of the teachings of Long et al. in order to completely seal the interior chamber from any infiltration of biological agents.

Claims 26, 27 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Michielson (U.S. patent No. 3,575,167). In chapter 5 of the Long, et al., BIOTERRISM SECRETS FOR SURVIVAL), Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons.

On pages 43 and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long, et al. suggests different ways to seal off a room in your home, one being to use "kits" of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn't further address how the interior atmosphere should be replenished, attention is directed to the Michielsen reference which discloses a breathing system for generating oxygen and absorbing carbon dioxide (see column 4, line 2 through column 5, line 20) to be stored in a home (see column 2, lines 7-10) and used for many diverse purposes (see column 2, lines 55-59) such as in toxic or radioactive contaminated atmosphere (see column 1, lines 72-74). To include this type of rebreathing apparatus with the "kit" of Long, et al. would have been obvious in order to breath inside the safe room should the oxygen supply diminish as well as to breath safely when the time comes to leave the shelter as recognized on page 53 of the Long, et al. reference. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claims 26, 31 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Staub, et al. In chapter 5 of the Long et al., BIOTERRISM SECRETS FOR SURVIVAL), Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons. On pages 43 and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long et al. suggests different ways to seal off a room in your home, one being to use "kits" of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn't further address how the interior atmosphere should be replenished, attention is directed to the Staub, et al. reference which discloses a carbon dioxide/oxygen generating system for use in a sealed chamber or room (see abstract). To include this type of system with the "kit" of Long, et al. would have been obvious in order to maintain the breathable atmosphere within the sealed room. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold Joyce whose telephone number is (571) 272-4876. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Harold Joyce
Primary Examiner
Art Unit 3749